CITATIONS TO OPINIONS BELOW.

The Opinion of the Court of Appeals is reported at ..... F. 2d ....., and is attached to this Petition as Appendix "A," *infra*, pp. 11-12. The Decree enforcing the Board's Order is attached to this Petition as Appendix "C," *infra*, pp. 47-48. The Order amending the original decision of the Court of Appeals, entered on June 25, 1959, is attached to this Petition as Appendix "D," *infra*, p. 51. Rehearing was denied both by the panel of Judges who heard the case and by the Court sitting *en banc*, June 25, 1959.

The Board's Decision and Order is reported at 121 NLRB No. 92, and is attached to this Petition as Appendix "B," *infra*, pp. 13-46. Because the Board adopted the Findings of the Trial Examiner, his Findings and Recommendations are included in Appendix "B."[1]

JURISDICTION.

The Opinion of the Court of Appeals was rendered on May 7, 1959. The enforcement Decree was modified and the Petition for Rehearing denied on June 25, 1959.

The jurisdiction of this Court is invoked under Title 28 USC Section 1254 (1) and Section 10 (e) of the National Labor Relations Act as amended, 61 Stat. 36 (1947), 29 USC Sec. 151 *et seq.* (1956) (hereinafter referred to as the "Act").

QUESTIONS PRESENTED.

1. Whether the National Labor Relations Board may issue an order under Section 10 (c) of the Act which requires the Petitioners to cease and desist from inducing

[1] References to the Appendices to this Petition will be hereinafter indicated by "App. pp. ....."

employees of any secondary employer to engage in a work stoppage for the object of forcing such employer to cease doing business, not only with the charging party (in this case, Clark Bros. Transfer) but also with "*any other similar common carrier in Nebraska.*"

2. Whether the Court of Appeals erred in holding that an order of the Board should be enforced unless the evidence is "*so insubstantial* as to warrant [the] Court in holding that the Board went beyond its powers."

STATUTORY PROVISIONS INVOLVED.

The pertinent provision of the Act, Section 8 (b) (4) (A), is printed in Appendix "E", *infra*, p. 52.

STATEMENT OF THE CASE.

Clark Bros. Transfer Co., of Omaha, Nebraska, the charging party in this proceeding, and Local 554 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, also of Omaha, Nebraska (a union not a party to this proceeding), have been engaged in a labor dispute since 1955 (App. pp. 24-25).

On January 29, 1957, the president of Clark Bros. Transfer Co. testified at a hearing before the Interstate Commerce Commission in Lincoln, Nebraska, that his company had interlined freight with several union carriers, among which were BOS and Burlington (App. pg. 25). Richard Kavner, found by the Board (over Petitioners' objections) to be an agent of the Central States Drivers Council, was present at this hearing (App. pg. 25). Following Clark's testimony on January 29th, Richard Kavner made several long distance calls, the first to the chairman of the Central States Drivers Council and later to the president of Local 147 (App, pg. 34). The General Counsel for the Board

made no effort to prove the contents of these telephone conversations (App. pg. 34).

On January 30, 1957, a work stoppage occurred at the freight terminals of both BOS Lines and Burlington Lines in Des Moines Iowa (App. pg. 26). The Board found that the work stoppages were "instigated" by an agent of the Central States Drivers Council and "executed by Local 147" for the purpose of forcing BOS and Burlington to cease doing business with Clark Bros. Transfer Co. (App. pg. 37).

The finding that the stoppage at the freight dock of Burlington Freight Lines was "executed" by Local 147 was based primarily upon the testimony of the terminal manager that the men walked off the job at approximately 8:45 A. M., without giving him any reason except that they were "told to clock off" (App. pg. 38). He did not identify who told the employees to "clock off"—but the Trial Examiner inferred that it was the Local Union (App. pg. 38).

On the same day of the Burlington walk out, the employees at the freight dock of BOS Lines also walked off the job without warning. No explanation was ever given the Company for the walk out (App. pg. 28), although there had been a walk out prior, and one subsequent, to the occurrence on January 30th (App. pp. 31-32).

The Board held that the General Counsel had proven a "prima facie" case, and that the Petitioners had failed to meet the burden of going forward with "evidence to dispel the effect of this prima facie case" (App. pg. 14). The Board directed the Petitioners to cease and desist from:

> "Engaging in, inducing or encouraging the employees of Bos Lines, Inc., Burlington Truck Lines, Inc., or any employer other than Clark Bros. Transfer Company to engage in, a strike or concerted refusal in the course of their employment to use, manufacture,

process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require Bos Lines, Inc., Burlington Truck Lines, Inc., *or any other employer* or person to cease doing business with Clark Bros. Transfer Company *'or any other similar common carrier.'*" (Emphasis added.)

The Court of Appeals enforced the order, first construing the quoted language to mean "any 'other non-unionized motor truck common carrier' within the jurisdiction of petitioners" (App. pg. 12). Later the Court modified the order to include "*any other similar common carrier in the state of Nebraska*" (App. pg. 51).[2]

REASONS FOR GRANTING THE WRIT.

1. The First, Fifth, Seventh, and District of Columbia Circuit Courts of Appeal have issued conflicting opinions concerning the proper scope of cease and desist orders in cases arising under Section 8 (b) (4) (A) of the Act.

The order of the Board, as modified and enforced by the Court of Appeals, extends the scope of coverage of the cease and desist order and enforcement decree from Clark Bros. Transfer Co., the charging party, to all "similar common carriers in Nebraska" (App. pg. 51). As thus written, the order prohibits inducement of the employees of all employers, anywhere in the United States, from engaging in a work stoppage, which has as its object forcing their employer to cease doing business with any carrier, in the State of Nebraska, "similar" to Clark Bros.

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[2] It is this italicized language of the Board's order, as modified by the Court of Appeals, which raises the first issue presented in this Petition.

Stated simply, *any* alleged secondary boycott involving a Nebraska common carrier, which is allegedly similar to Clark Bros., will be litigated in a contempt proceeding rather than before the Labor Board.

This type of order has been considered by four United States Courts of Appeal, with conflicting results. The Fifth Circuit Court of Appeals has rejected enforcement of this type of order. *Truck Drivers Local 728 v. NLRB*, 265 F. 2d 439 (C. A. 5); *NLRB v. 926 International Union of Operating Engineers*, ... F. 2d ...., 37 Labor Cases ¶65,481 (C. A. 5).

The Court of Appeals for the District of Columbia is apparently divided on the issue. In the case at bar the Court enforced a "broad" order, but another division of the same court denied enforcement of a similar order in *International Brotherhood of Teamsters et al. v. NLRB*, 262 F. 2d 456 (C. A. D. C.).

The Courts of Appeal for the First and Seventh Circuits affirmed "broad" orders in *NLRB v. Springfield Bldg. & Const. Trades Council*, 262 F. 2d 494 (C. A. 1), and *NLRB v. Local 135*, ... F. 2d ..., 37 Labor Cases, ¶65,539 (C. A. 7).[3]

2. The Proper Scope of Remedial Orders in Cases Involving Section 8 (b) (4) (A), Is of Vital Importance to the Administration of the Act; and Has Not Been Expressly Considered by This Court.

The precise issue presented in the case at bar, namely, the proper scope of Board Orders, in cases involving Sec-

[3] In the Local 135 case, the Seventh Circuit relied upon record evidence of past similar violations to justify a "broad" order. Clark Bros., the charging party herein, was also the charging party in a prior 8(b) (4) (A) proceeding (*Local 554 v. NLRB*, 262 F. 2d 450 [C. A. D. C.]). However that proceeding did not involve either of the Petitioners herein.

tion 8 (b) (4) (A), has never been expressly considered by this Court. Broad orders of the type issued in the instant case are now commonly authorized by the Board in these cases, notwithstanding its prior policy to the contrary. *E. g. Thurston Motor Lines, Inc.*, 110 NLRB 748, 749.

The disposition of cases arising under Section 8 (b) (4) (A) is oftentimes crucially dependent upon such divergent, unsettled and vague questions as performance of "struck" work,[4] existence of a "home" situs,[5] single "employer" or "ally" status of separate corporations,[6] "employee" status of foreman holding union membership[7] and other issues for which no label has been devised.[8] Thus, the effect of the type of order issued in this case is to convert the Courts of Appeal into a "labor court of first instance by virtue of its contempt powers," (*Teamsters Local 554 v. NLRB*, 262 F. 2d 456, 463 (C. A. D. C.)), contrary to the rule expressed by this Court in *NLRB v. Express Publishing Co.*, 312 U. S. 426, 435. *Cf. May Department Stores v. NLRB*, 326 U. S. 376, 388.

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[4] *Business Machine & Office Appliance Mechanics (Royal Typewriter Company)*, 111 NLRB 317, *enforcement denied*, 228 F. 2d 553 (C. A. 2).

[5] *Teamsters Local 968 (Otis Massey Co.)*, 109 NLRB 275, *enforcement denied*, 225 F. 2d 205 (C. A. 5); *Teamsters Local 859 (Associated General Contractors, Georgia Branch)*, 110 NLRB 2192, *enforcement denied*, 229 F. 2d 514 (C. A. D. C.).

[6] *Teamsters Local 688 (Bachman Machine Co.)*, 121 NLRB No. 165, *rev'd* ... F. 2d ..., 37 Labor Cases ¶ 65,454 (C. A. 8); *J. G. Roy & Sons Co.*, 118 NLRB 280, *rev'd* 251 F. 2d 771 (C. A. 1).

[7] *Carpenters District Council of Milwaukee County (Del Mar Cabinet Company)*, 121 NLRB No. 140, *enforcement denied*, ... F. 2d ..., 37 Labor Cases ¶ 65,595 (C. A. D. C.).

[8] *Teamsters Local 24 (ACE Transportation Co.)*, 120 NLRB 1103, *enforcement denied*, 266 F. 2d 675 (C. A. D. C.); *Seafarers International Union (Todd Shipyards Corp.)*, 119 NLRB 1638; *enforcement denied*, 265 F. 2d 585 (C. A. D. C.); *Teamsters Local 618 (Incorporated Oil Company)*, 116 NLRB 1844, *enforcement denied*, 249 F. 2d 332 (C. A. 8).

3. The Board's Order, in Addition to Being Too Broad, Is Inherently Vague.

In addition to being too broad, the order, even as modified by the Court of Appeals, is too vague to be judicially sound. The court below held that a "similar" common carrier was a "non-unionized" common carrier. Petitioners are left to speculate whether a carrier whose drivers are union members and whose office employees are non-union is a "non-unionized" carrier. Similarly, must "non-unionized" carriers be involved in a labor dispute with Teamsters Local 554 to be "similar" to Clark Brothers? Are only carriers domiciled in Nebraska included within the amendment made by the Court of Appeals or is any carrier doing business in Nebraska covered by the order as modified?

The inherent vagueness of the order not only renders it objectionable but also dramatizes the need for first submitting new disputes involving other employers to the Board, rather than litigating them in contempt proceedings. *Cf. Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287, 296; *U. S. v. Cohen Grocery Co.*, 255 U. S. 81, 89.

4. The Court Below, Contrary to the Decision of This Court in Universal Camera Corp. v. NLRB, 340 U. S. 474, Held That the Board's Orders Are Entitled to Enforcement Unless the Evidence Is "So Substantial as to Warrant" the Conclusion That the Board "Went Beyond Its Powers."

In reviewing the findings of fact made by the Board, the court below adopted a negative standard of review. The court held that while the evidence "was not strong," it was not "so insubstantial as to warrant [the] court in holding that the Board went beyond its powers" under the

Act (App. pg. 12). The Petitioners respectfully submit that the court's role in such cases is an affirmative one. Thus, the issue is *not* whether the evidence is "so insubstantial" as to find that the Board exceeded its powers under the Act, but rather whether the Board's findings are supported by *substantial* evidence. *Universal Camera Corp. v. NLRB*, 340 U. S. 474, 487.

The misconstruction of "substantial evidence" rule by the court below puts judicial review of the facts beyond the reach of the courts and reinstates the interpretation of the National Labor Relations Act rejected by Congress when it enacted the 1947 amendments to the Act.

SUMMARY.

The order of the Board, without the objectionable language ("any other similar common carrier in Nebraska"), protects the charging party, Clark Bros. Transport, from any and all secondary work stoppages having as an object the interruption of Clark Bros. business relationships, regardless of where such work stoppages occur and regardless of the circumstances under which they occur. But the addition of the language "any other similar common carrier in Nebraska", will require the Petitioners to litigate an infinite variety of legal questions arising out of disputes in no way involving or affecting Clark Bros., at the risk of contempt. Thus, this type of order vitiates the administrative machinery which Congress has established for the original adjudication of these questions. For this reason alone, the Petition for Certiorari should be granted. In addition, however, the conflicting views of the First, Fifth, Seventh and District of Columbia Circuit Courts of Appeals independently support this Petition for Certiorari.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

DAVID PREVIANT,

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APPENDIX "A".

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit.

No. 14,726.

Central States Drivers Council, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147, Petitioners,

v.

National Labor Relations Board, Respondent.

On Petition to Review and Set Aside and on Cross-Petition to Enforce an Order of the National Labor Relations Board.

Decided May 7, 1959.

Mr. David Leo Uelmen, with whom Mr. Herbert S. Thatcher was on the brief, for petitioners.

Miss Fannie M. Boyls, Attorney, National Labor Relations Board, with whom Messrs. Jerome D. Fenton, General Counsel, National Labor Relations Board at the time the brief was filed, Thomas J. McDermott, Associate General Counsel, National Labor Relations Board, and Marcel Mallet-Prevost, Assistant General Counsel, National Labor Relations Board, were on the brief, for respondent.

Before Mr. Justice Burton, retired*, and Wilbur K. Miller and Fahy, Circuit Judges.

Per Curiam: Following a hearing and other proceedings at the Trial Examiner and Board level, the Labor

* Sitting by designation pursuant to Sec. 294 (a), Title 28, U. S. Code.

Board found that petitioners had violated section 8 (b) (4) (A),[1] the secondary boycott provision of the Labor Management Relations Act, by inducing and encouraging the employees of Bos Lines, Inc., and Burlington Truck Lines, Inc., to engage in a strike with an object of forcing these companies to cease doing business with Clark Brothers Transfer Company "and other nonunionized motor truck common carriers." The cease and desist order which followed ran against the unlawful activity as it might affect the Clark Company "or any other similar common carrier."

The evidence relied upon by the Board was in large part circumstantial. While not strong, the evidence was not so substantial as to warrant this court in holding that the Board went beyond its powers in resolving the factual doubts against petitioners.

Petitioners, referring to our recent decision in International Brotherhood of Teamsters Union, Local 554 v. NLRB, ... U. S. App. D. C. ..., 262 F. 2d 456, contend that in any event the order is too broad because it requires them to cease the unlawful activity not only as to the Clark Company but also as to "any other similar common carrier." But the record before the Board in the present case supports its finding that the strikes were with the object of forcing Bos and Burlington to cease doing business not only with Clark Company but with "other nonunionized motor truck common carriers." In these circumstances we construe the language of the order, "or any other similar common carrier," to mean any "other nonunionized motor truck common carriers" within the jurisdiction of petitioners. As so construed the order of the Board will be

Affirmed.

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[1] Added by 61 Stat. 141 (1947), 29 U. S. C. § 158 (b) (4) (A) (1952).

APPENDIX "B".

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121 N. L. R. B. No. 92 — D-271 — Des Moines, Iowa

United States of America.

Before the
National Labor Relations Board.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Central States Drivers' Council; and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147, Employer, and Clark Bros. Transfer Company, Petitioner.	Case No. 17-CC-60.

DECISION AND ORDER.

On May 8, 1958, Trial Examiner Eugene E. Dixon issued his Intermediate Report in the above-entitled proceeding finding that Respondent Council and Respondent Local[1] had engaged in, and were engaging in, certain unfair labor practices and recommending that they cease and desist

[1] The Trial Examiner found that Respondent International had not engaged in any unfair labor practices. As the General Counsel has not excepted to this finding of the Trial Examiner, we adopt it pro forma.

therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that Respondents had not engaged in certain other unfair labor practices and recommended that the complaint be dismissed with respect thereto. Thereafter, the General Counsel and Respondents filed exceptions to the Intermediate Report and supporting briefs.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case[2] and

hereby adopts the findings, conclusions, and recommendations of the Trial Examiner was sufficient to establish a prima facie case of violation of Section 8 (b) (4) (A) on the part of the Council and the Local.[3] The burden then shifted to the Respondents to come forward with sufficient evidence to dispel the effect of this prima facie case.[4] Although such evidence if available was within the reach and control of Respondents they made no attempt to present it, but rested their case at the close of the General Counsel's

[2] Respondents' request for oral argument is denied because the record, the exceptions and the briefs adequately present the issues and the positions of the parties.

[3] In making findings the Board is not restricted to considering only direct evidence. It may also rely on circumstantial evidence. *N. L. R. B. v. Abbott Worsted Mills*, 127 F. 2d 438, 440 (C. A. 1); *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 602.

[4] See *Jasper National Mattress Company*, 80 N. L. R. B. 75, 77.

presentation of his evidence. Accordingly, we adopt the Trial Examiner's finding that Respondents Council and Local violated Section 8 (b) (4) (A) of the Act by inducing and encouraging the employees of Bos Lines, Inc., and Burlington Truck Lines, Inc., to engage in a strike with an object of forcing these companies to cease doing business with Clark Bros. Transfer Company and other nonunionized motor truck common carriers.[5]

We also find no merit in Respondents' affirmative defense that the "hot cargo" provisions in their collective bargaining agreements with Bos and Burlington lawfully entitled them to induce the employees of these companies to refuse to handle goods of nonunion carriers. The United

States Supreme Court has recently affirmed the holding of the Board that "hot cargo" clauses are ineffective as a defense to secondary boycott allegations.[6]

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[5] Board Member Rodgers agrees that Respondents Council and Local violated Section 8 (b) (4) (A) of the Act. To establish the illegality of the Respondents' acts, including the unlawful purpose of the walkouts here involved—i. e., that they had as their purpose the forcing of Bos and Burlington to cease doing business with Clark and other nonunion carriers—Member Rodgers relies exclusively on events which occurred no earlier than six months before the filing of the original charge herein and its service upon the parties on May 6, 1957. In this connection, Member Rodgers notes in particular the admission made by Kavner, the Council's agent on January 30 or 31, 1957, in the course of a telephone conversation with Martin, Bos' terminal manager in Omaha. As set forth in detail in the Intermediate Report, when Martin asked Kavner the reason for the Des Moines walkouts, Kavner replied, "Well ha-n't John Bridge warned your company of doing business with Romans and Clarks."

Like Member Rodgers, Members Bean and Fanning find that the events occurring within the six month period preceding the filing of the charge in this case, are sufficient to find a violation. In addition, however, they rely, as did the Trial Examiner, on events occurring before that period but only as background.

[6] *Local 1976, Carpenters v. N. L. R. B.* (*Sand Door & Plywood Co.*), 78 Sup. Ct. 1011 (1958).

Order.

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Central States Drivers' Council, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen Local No. 147, their officers, representatives, agents, successors and assigns shall:

1. Cease and desist from:

(a) "Engaging in, inducing or encouraging the employees of Bos Lines, Inc., Burlington Truck Lines, Inc., or any employer other than Clark Bros. Transfer Company to engage in, a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require Bos Lines, Inc., Burlington Truck Lines, Inc., *or any other employer* or person to cease doing business with Clark Bros. Transfer Company *or any other similar common carrier*."

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at their business offices and meeting places and all other places where notices to their members are usually posted copies of the notice attached hereto as "Appendix A."[7] Copies of said notice to be furnished by the Regional Director for the Seventeenth Region shall, after being duly

[7] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of a United States Court of Appeals, Enforcing an Order."

signed by official representatives of both Respondents be posted by the Respondents immediately upon receipt

thereof and maintained by them for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to their members are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(b) Mail to the Regional Director for the Seventeenth Region signed copies of the notice attached hereto as "Appendix A" for posting at the business offices of Bos Lines, Inc., Burlington Truck Lines, Inc., and Clark Bros. Transfer Company, the companies willing, for sixty (60) consecutive days, in places where notices to employees are customarily posted. Copies of the notice, to be furnished by the Regional Director for the Seventeenth Region, shall be returned forthwith to the Regional Director after they have been signed by the official representative of the Respondent Union for said posting.

(c) Respondent Council shall also send to each of its constituent or member locals copies of the notice attached hereto as "Appendix A" to be furnished by the Regional Director for the Seventeenth Region and duly signed by an official representative of the Council, with directions by the Council to post said copies of the notice in each of the constituent or member locals' business offices, meeting places, and other places where notices to their employee members are customarily posted. Respondent Council shall further instruct said locals that these notices shall be posted by the locals immediately upon receipt thereof and be maintained by them for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all

places where notices to members are customarily posted. Reasonable steps shall be taken by said locals, upon the direction of Respondent Council, to insure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Seventeenth Region, in writing, within ten (10) days from the date of this Order what steps Respondents have taken to comply herewith.

It Is Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that Respondent International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, has violated any section of the Act, and insofar as it alleges that Respondents

Central States Drivers' Council and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers' Helpers, Dockmen, and Warehousemen, Local 147 have violated Section 8 (b) (4) (B) and 8 (b) (1) (A) of the Act.

Dated, Washington, D. C.

.....
Philip Ray Rodgers, Member,

.....
Stephen S. Bean, Member,

.....
John H. Fanning, Member,

(Seal) National Labor Relations Board.

Appendix A.

NOTICE.

To All Members of Central States Drivers' Council; To All Members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147; To All Members of All Other Local Unions Affiliated With Central States Drivers' Council; and to All Employees of Bos Lines, Inc., Burlington Truck Lines, Inc., and Clark Bros. Transfer Company

Pursuant to

a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not engage in, or induce or encourage the employees of Bos Lines, Inc., Burlington Truck Lines, Inc., or any employer other than Clark Bros. Transfer Company, to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle, or work on goods, articles, materials or commodities, or to perform any services for their respective employers, where an object thereof is to force or require said employers or any other employer or person to cease doing busi-

ness with Clark Bros. Transfer Company or any other similar common carrier.

Central States Drivers' Council
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147.
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT AND RECOMMENDED ORDER.

Statement of the Case.

Upon charges filed by Clark Bros. Transfer Company (herein called Clark), the General Counsel of the National Labor Relations Board (herein called the General Counsel and the Board, respectively) by the Board's Regional Director for the Seventeenth Region issued a complaint dated December 27, 1957, against International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Central States Drivers' Council; and Interna-

tional Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147 (herein jointly referred to as Respondents and sometimes individually as the International, the Council and the Local, respectively), alleging that Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Sections 8 (b) (1) (A), 8 (b) (4) (A) and (B), and 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the complaint, charges and a notice of hearing were duly served upon the parties.

With respect to the unfair labor practices, the complaint alleges that since January 30, 1957, Respondents, acting jointly as well as severally, have engaged in or induced or encouraged the employees of Bos Truck Lines,[1] Burlington

Truck Lines, Inc. (herein called Bos and Burlington, respectively) and other unnamed employers to engage in a strike or a concerted refusal in the course of their employment to transport or otherwise work on or handle any goods, articles, materials, or commodities, or to perform any services the object being (a) to force or require the named employers to cease doing business with Clark or other Nebraska carriers whose employees are not represented for purposes of collective bargaining by any of the Respondents and (b to force Clark and such other employers to recognize or bargain with Respondents.

In their separately filed answers Respondents all deny any violations of law and each pleads as a defense collective bargaining contracts with Bos and Burlington con-

[1] Due to a recent reorganization and merger, the current name of this company is Bos Lines, Incorporated. The applicability of the commerce figures herein for this company is not affected by the change in corporate structure or name.

taining so-called "Hot Cargo" clauses. These defenses became the subject of a motion by the General Counsel to strike. The motion was not granted, not because of any disagreement with or disrespect to the Board which has held that such clauses are illegal per se[2] but because the clauses in question are being reviewed by the Supreme Court and no reopening of the record would be necessary if any change might result from such review before the Board disposes of this matter.

Pursuant to due notice a hearing was held at Des Moines, Iowa, February 11 and 12, 1958. The Government and the Respondents were represented by counsel. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to present oral argument at the close of the hearing and thereafter to file briefs as well as proposed findings of fact and conclusions of law. Subsequent to the hearing, Respondents and the General Counsel filed briefs which I have duly considered.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

Findings of Fact.

I. The Businesses Involved.

Clark Bros. Transfer Company is a common carrier of freight by motor vehicle, maintaining terminals at Norfolk and Omaha, Nebraska, operating in Nebraska only. In 1954, its total revenue was $262,849.72, of which $70,837.75 was from interlining;[3] in 1955, its total revenue was

[2] *Teamsters Local 728, etc. (Gerrane Tarts Company)*, 119 N. L. R. B. No. 53, 41 L. R. R. M. 1087.

[3] The term "interlining" refers to receiving freight from interstate motor carriers for delivery to its destination or delivering freight to such carriers for further transportation.

$286,345.80, of which $46,208.57 was from interlining; in 1956, its total revenue was $217,411.99, of which $3,877.01 was from interlining; in 1957, its total revenue was $252,-296.63[4] with $15,606.11 being derived from interlining, $6,168.56 of which was derived from interlining with Nebraska Shortline Carriers, Inc., which began operations about February, 1957.

Bos Lines, Inc., and Burlington Truck lines, Inc., are interstate motor carriers operating on certificates of authority from the Interstate Commerce Commission. Bos operates in five midwestern States including Iowa and Nebraska. In 1957, its revenues exceeded $3,360,000. Its total dollar volume of business conducted at its Des Moines terminal was $262,892, of which in excess of $130,000 was

from interstate business. Its total interstate business exceeded $3,000,000. Burlington operates in nine midwestern States, including Iowa and Nebraska. It maintains terminals in Des Moines, Iowa, and other places, and up to about January, 1958, maintained a terminal in Omaha, Nebraska. During 1955, its gross annual revenue was $12,510,871 and its volume of business at its Des Moines terminal was $412,711.73. During 1957, its revenue for transportation of freight between different States exceeded $100,000. There is no question as to the Board's jurisdiction here.

II. The Labor Organizations Involved.

The complaint alleges, the answer admits, and I find that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Central States Drivers' Council; and International Brotherhood of Team-

[4] The record incorrectly shows a total of $219,296.63.

sters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147, are labor organizations within the meaning of Section 2 (5) of the Act.

III. The Unfair Labor Practices.

Aside from such confusion as resulted from some obviously and painfully reconsidered testimony by at least one of the General Counsel's witnesses which conflicted with a prior sworn statement given about these matters,[5] there is little conflict in the evidence here since the Respondents offered none.

The story for our purposes starts with a request by Teamsters Local 554 of Omaha, Nebraska, to Clark in the fall of 1955, for recognition as the bargaining agent of Clark's employees. Pursuant to this request a meeting took place between Clark and the Union a week or two later. Representing the Union at this time were Albert Parker, secretary-treasurer of Local 554, and Richard Kavner, who was identified as a representative of the Central States Council of Teamsters.[6] Kavner claimed that the Union

[5] I have particular reference to the witness Sampson whose attitude on the stand was one of awkward embarrassment as he disavowed his previous sworn statement. I might add that his uncertainty and professed lack of memory on the crucial part of his testimony was quite incongruous with his detailed recollection and ready answers on other phases of his testimony. The essential part of his testimony that I credit and accept is merely the gassing of the two identified Burlington trucks on the morning of January 30 is supported by his written records made at or about the time the events occurred.

[6] This is according to the testimony of W. J. Clark, a copartner of the Charging Party. Respondents attack any identification of Kavner as an agent of Respondents on the basis of this testimony as being hearsay and incompetent. The objection was not pressed when the General Counsel stated that the evidence was only being "offered by way of background" since it occurred outside the 10 (b) period. Kavner's agency will be discussed later.

represented a majority of Clark's employees and wanted a contract. Clark refused in the belief that the Union did not represent a majority of the employees. At this meeting Kavner told Clark of the Union's "program to organize all of the nonunion trucklines in Nebraska, stating that (Clark) had from six months to two years to survive without a contract." The Union's unsuccessful attempt at this time to get recognition resulted in a picket line at Clark's Omaha terminal starting about the middle of September, 1955. It was out of this situation that charges were filed by Clark which resulted in an 8 (b) (4) (A) and (B) order December 26, 1956, against Local 554, reported at 116 N. L. R. B. 1891.

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On July 11, 1956, while the picket line was still in existence, a meeting occurred between Clark and one John Bridge, executive chairman of an organization called the Motor Carrier's Labor Advisory Council of Chicago. This meeting was arranged by Watson Brothers Transportation Company, a union employer. Bridge at this time offered to represent Clark as labor advisor at $15 a month. Clark declined until such time as their men "were represented by a union." As a result of the picket line activity, Clark's business declined to such an extent as to necessitate the layoff of nine employees in late 1955 and early 1956—a reduction of 20 percent or more.

On January 20, 1957, W. F. Clark testified at an I. C. C. hearing at which Kavner was present. In his testimony Clark mentioned both Bos and Burlington as union firms he interlined with.[7] On January 30, both Bos and Bur-

[7] At the time of the facts alleged and at the time of the hearing both Bos and Burlington had collective bargaining agreements with the Central States Drivers' Council and presumably with the various locals under whose jurisdiction they operate including Local 147.

lington's terminals in Des Moines were closed down by walkouts. It is these walkouts that the General Counsel alleges were instigated by the Respondents for the purpose of forcing Bos and Burlington to cease doing business with Clark and to force Clark to recognize Respondents.[8] In support of this allegation, besides the foregoing background, the General Counsel adduced the following evidence, none of which directly implicates Respondents but all of which, according to the General Counsel, when considered as a whole is sufficient to permit an inference that the Respondents committed the unfair labor practices alleged.[9]

The Walkouts.

a. Burlington.

At about 8:45 a. m., January 30, Gunner Vignaroli, Burlington's Des Moines terminal manager, discovered that his "boys were punching out and going home." Vignaroli asked them "why they were going off the job" and was told that "they were told to clock off." "What happened fellows, did I do something wrong that you are walking out on me?" he asked the men, "Have I been unjust to cause a walkout on me?" "No," they replied, "we're just walking off." Vignaroli then called Dick Conn, president of Local 147, and told him, "Dick . . . I believe I'm having a walkout . . . have you heard any-

[8] It was stipulated that none of the Respondents jointly or severally has been certified under Section 9 of the Act as bargaining agent of Clark's employees.

[9] As pointed out in *Hartsell Mills Co. v. N. L. R. B.*, 111 F. 2d 291 (C. A. 4), at page 293, direct evidence of a purpose to violate the Act is rarely obtainable. As a result circumstantial evidence may be considered in arriving at a conclusion that an unfair labor practice has been committed.

thing about it?" Conn said he had "just heard about it" and that he would "get hold of the men to get them back to work to see what it is all about." Vignaroli said that he "would sure appreciate it," and that he "would like to know what the cause was if possible." Vignaroli was aware of no outstanding grievances or complaints by the men at this time.

Later Vignaroli heard that the men were going to a union meeting. That afternoon about 4 o'clock Conn called and told Vignaroli that the men would be back to work the next morning but that "he knew nothing of what the walkout was about or what it was for, but the boys would go back to work." Vignaroli was also told by Conn that the Union had not authorized the walkout.

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From the testimony of Max Woodrow Sampson, the manager of the Kecks 66 Service Station in Des Moines which services Burlington trucks, it appears and I find that he serviced two of Burlington's trucks on the morning of January 30. One he identified as number 969 driven at that time by Charles Dewey, and the other as number 3146 whose driver he did not identify. While he was servicing either one or the other of these two trucks, a 1956 "pink and ivory" Ford drove in. The driver of the Ford told the truck driver to "go back to the dock, that there was a walkout." The truck driver told Sampson that the driver of the Ford "was a man from the union office." He also "said something about Dick but there was no last name mentioned at all."

Both the drivers whose trucks were serviced by Sampson that morning were called as witnesses by the General Counsel. Charles Dewey, the one whom Sampson had originally sworn, was present when the "pink and ivory" Ford drove

into the service station, denied that such was the case, claiming that he did not know of the walkout until he returned to the terminal some time between 8 and 9 o'clock that morning.[10] Albert L. Thomas, the other driver whose truck was served by Sampson that morning, testified that as he was leaving the terminal lot with his loaded truck he was told by a returning driver (either Derwin Vert or Charles Dewey) that there would be no work that day. He continued on to the service station, had his truck serviced, got a cup of coffee and returned to the terminal. Both Thomas and Dewey punched out upon their return to the terminal, but not at anyone's specific suggestion. As Thomas put it, "Everybody else was punched off the clock, so I punched off." Neither of these witnesses would admit knowing or ever having been told the reason for the walkout. Moreover, they both testified that their return to work the next day was not at the request of anyone but apparently was a spontaneous or intuitive act. As put by Dewey, the "general consensus of opinion seemed to be that we would return the next morning, and I went down on the chance that we would." According to their testimony, neither attended the union meeting that day.

Equally in the dark as to the cause of or the purpose for the walkout was Leigh Osborn, operations manager for Bos Lines. Osborn, when he learned of the walkout, immediately drove to Des Moines from his office in Marshalltown. In Des Moines, he tried to get in touch by telephone with officials of the Local but was unsuccessful. He then tried to call Hoffa in Detroit but learned that Hoffa was at a convention in Miami. Next he called Carl Keul in Minneapolis (whom he understood to be an International repre-

[10] Dewey testified that he reported for work at 7:30 a. m., loaded his truck, went to the service station, gassed his truck, drank a cup of coffee and returned to the dock. He could not recall whether or not he made any deliveries.

sentative whose jurisdiction covered Minnesota and Iowa) getting his number either from the directory or the Local's receptionist. Keul "stated that he very definitely had no knowledge" of the walkout and suggested that Osborn get in touch with John Bridge—that maybe Bridge might be able to help him.

Later that day, Osborn finally contacted Chuck Kirschbaum, assistant business agent for the Local. Kirchbaum was unenlightening, telling Osborn that "he had no knowledge" of the walkout. Another person called by Osborn on this occasion was Albert Parker, treasurer of the Omaha Local 554.[11] Osborn asked Parker "if, to his knowledge (the Bos) firm was in violation of the hot goods clause in respect to the short line carriers." Parker's reply was that it was not in violation of that clause of the contract to his knowledge.

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Osborn also had two telephone conversations with Kavner about the matter, one in the evening of January 30 and the other the following morning.[12] In these conversations Osborn asked for an explanation of the walkout. Kavner "claimed no personal knowledge of it and suggested that (Osborn) contact John Bridge." In this conversation Osborn indicated his "intention of discharging the employees

[11] According to Osborn, this call was prompted by Keul's suggestion that Osborn call Bridge. Just what the connection is does not appear.

[12] The January 30 call apparently was made by Osborn, while the January 31 call was made by Kavner as appears from telephone company records about which more will be said later. Osborn was uncertain as to the order of the calls but his best recollection was that Kavner called first, in the evening of January 30, introducing himself with the statement "This is Dick Kavner with the Teamsters, you know who I am." I do not credit this testimony since it is apparent and I find that Osborn initiated the first call to Kavner. In any event Osborn testified he knew Kavner by reputation "as being the trouble shooter for Mr. Hoffa."

who had participated in their second unauthorized strike within nine months, as provided in the contract."[13] To this end, apparently on January 30, termination notices were mailed to the employees involved. The next day all the striking employees returned to work. Those to whom the notices were sent were not permitted to punch in. In sympathy, the others refused to work. This situation presumably gave rise to the second telephone conversation between Kavner and Osborn, this one instituted by Kavner. At this time Kavner told Osborn that "because of those previous warning letters (Osborn) was forcing him to call this an authorized stoppage." At the end of this conversation (Osborn apparently having capitulated to Kavner's checkmate statement about authorizing the walkout), Kavner told Osborn to "contact Dick Conn, and advise him that all the men were to return to work immediately."

The same morning, after refusing to permit the men to go to work, Osborn also was called over the telephone by Dick Conn of the Local. Conn told Osborn that he "had better" put the men back to work. Conn also indicated that he had discussed the matter with Kavner "either that morning or the previous evening" and that it was Kavner's "recommendation also that the men be returned to work." As a result of these conversations the terminations were withdrawn and all the men returned to work the next day. According to Osborn when Kavner made the statement "that he had to call the walkout authorized," Osborn considered the walkout authorized. On cross-examination, however, Osborn admitted that pursuant to Article 8[14] of the union agreements under which his com-

[13] An unauthorized strike had occurred in June, 1950. Warning notices apparently had been given the strikers on this occasion and the Company was now relying on Article X of the contract allowing discharges after a prior warning within a 6-month period.

[14] There are two agreements involved, the Central States Area Local Cartage Agreement and the Over the Road Motor Freight

pany was operating, he had received a letter from the Local designating Tom Jones as the only person empowered to authorize a strike. This designation had never been revoked or changed.

On the evening of the Bos shutdown or the day after, Walter Martin, then terminal manager for Bos in Omaha, had asked his home office what the trouble was in Des

Moines. Not wanting "to put it on the teletype what the trouble was" the company referred him to Kavner. He called Kavner at the Blackstone Hotel in Omaha[15] and asked him the reason for the Des Moines walkout. Kavner's reply was, "Well, hasn't John Bridge warned your company of doing business with Romans and Clarks?"

In addition to the January 30 walkouts in question here, and the unauthorized strike of June, 1956, alluded to in Osborn's testimony as shown in footnote 13, it further appears from Osborn's testimony that another unauthorized walkout occurred at the Bos Des Moines terminal February 4 to 6, 1957. The distinguishing feature between the January 30 walkout and the other two suffered by Bos was that no reason was ever given for the January 30 walkout while a reason was given on the June, 1956, occasion

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Agreement, both listing as parties the Company on the one hand and the Central States Drivers' Council and the Local on the other. Article VIII, Section 2 of both agreements makes provision for written notice to the Company of "the Union's authorized representatives who will deal with the Company, make commitments for the Union generally, and in particular have the sole authority to act for the Union in calling or instituting strikes or any stoppages of work . . ."

[15] As the record will show, Kavner was registered at the Cornhusker Hotel in Lincoln on January 29, 30 and 31. While Martin's original recollection was that he called Kavner on the day or the day after the walkout, he later testified that his call was made sometime prior to February 5. This explains the call to Omaha.

and "verbal" grievances were presented in connection with the February, 1957, incident. Osborn explained that the "whole story (of the unauthorized work stoppages) was an accumulation of incidents—certain concrete and imaginative grievances", growing out of the "dovetailing of the seniority lists the removal of roads—runs and road tractors" which resulted from the reorganization and merger which had taken place in the company.

John Bridge.

The mysterious John Bridge's offer on July 11, 1956, as executive chairman of the Motor Carrier's Labor Advisory Council of Chicago, to represent Clark as labor-advisor for $15 a month has already been noted. Kavner's and Keul's reference of Operations Manager Osborn of Bos Lines to John Bridge and Kavner's similar reference to Martin when both Martin and Osborn were trying to find out the cause of the January 30 walkout have also been noted. Other instances where the name of Bridge came into the evidence in this matter are as follows:[16]

In July or August of 1956, Bridge called Operations Manager Osborn of Bos Lines on the telephone to tell him that Bos was "violating certain specific procedures of the contract by interlining freight with the so-called short line carriers in Omaha," naming Roman, Clark and Ford Storage and Transfer as he had previously done in a letter to Bos on the same subject. Although Bridge did not represent Bos at the time of this call, Bos had previously been

[16] The General Counsel contends that Bridge is an agent of Respondents. Although in the circumstances here his conduct looks suspiciously like such agency, the evidence is not legally sufficient to establish that fact. Accordingly, none of Bridge's statements or conduct can be attributed to Respondents, or bind them. This does not mean, however, that Bridge's activities are totally devoid of probative value in this record or are incompetent evidence. While no reliance can be made as to the truth of any statements made by Bridge, the fact that he made the statements is important (as will be seen) and fully competent under the rules of evidence.

his client. In October, 1956, Bridge also called Gerald Mattox, vice president of Bos Lines. He asked Mattox if the latter knew his company was interlining with nonunion carriers at Omaha and pointed out that they could be shut down at other terminals because of it. Sometime between the 15th and 30th of January, 1957, Bridge again called Mattox in Marshalltown about the same matter. This time he specifically mentioned Bos' interlining with Roman Transfer and stated that if Bos "didn't stop such interlining they would be shut down at some other terminal."

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Neil Holscher, terminal manager for the Wilson Truck System at Omaha, testified about attending two meetings in February, 1957, called by Bridge—one on the 5th, the other on the 20th.[17] Article IX of the contracts, the so-called "Hot Cargo" clauses, were discussed at both these meetings. In the first meeting, Bridge "accused" Wilson of interlining freight with Clark at Omaha and pointed out that if they "continued to interline freight with any of these non-union carriers, there could be reprisals" at their out-of-state terminals. In the February 20 meeting there was a committee report on the possibility of interlining freight in Nebraska with union carriers. The committee was to meet with Kavner to explore this possibility with "the idea . . . to cut down the haul of the non-unionized carriers, including Clark, to the shortest distance possible. . . ."

Although his Company was no longer represented by Bridge, Martin attended the February 5 and 20 meetings on behalf of Bos Lines at Bridge's invitation. Bridge mentioned that some of them "were still turning freight to non-union carriers" citing Wilson Truck System as an example. On learning Martin's identity, Bridge pointed him

[17] Bridge at the time represented Wilson in collective bargaining.

out as a man who could testify "that he was shut down" for using nonunion carriers.

Kavner's Telephone Calls on January 29, 30 and 31.

The records of the Lincoln Telephone and Telegraph Company of Lincoln, Nebraska, show four long-distance calls made by Kavner on January 29, 30 and 31 from the Cornhusker Hotel in Lincoln as follows:

1. At 5:30 p. m. January 29 to Hoffa at Miami, Florida; duration of call 8 minutes.

2. At 11:38 p. m. January 29 to John Bridge at Cedar Rapids, Iowa—duration of call 11 minutes.

3. At 7:53 a. m. January 30 to Richard Conn at Des Moines, Iowa; duration of call—2 minutes.

4. At 8:15 a. m. January 31 to Leigh Osborn at Des Moines, Iowa, duration of call 8 minutes.

Except for the last call to Osborn, there is no indication what was said in any of these conversations.

Contentions and Conclusions.

The General Counsel contends that the above telephone calls when fitted into the composite picture of the entire record are a competent and probative part of the substantial evidence adduced by the General Counsel clearly supporting the allegations of the complaint. In substance the General Counsel's argument is this:

Respondents' failure to gain Clark's recognition "became a symbol of their failure to unionize all truckers in Nebraska" as had been promised by Kavner in his 1955 meeting with Clark. Direct pressure failing, Respondents resorted to indirect pressure as shown by the Board's December, 1956, order against Local 554,[18] and the events

[18] *Clark Bros. Transfer Company*, 116 N. L. R. B. 1801.

herein. The "situation was brought to a head" early in 1957 when Kavner heard Clark testify in the I. C. C. hearing as to the "several unionized carriers with whom his company was still able to interline." Kavner immediately

called Hoffa in Miami, presumably to get his approval of some affirmative action. Late that evening Kavner called Bridge, presumably as Respondents' agent in the "Hot Cargo" clause department. The next morning at 7:53 "Kavner, having received Hoffa's O. K. and having told Bridge what was expected of him," called Local 147. He instructed Conn of the Local that "Des Moines and the Bos and Burlington terminals there had been selected for the administration of the object lesson in what happens to unionized carriers who interline with nonunionized carriers." A 1-day walkout was ordered. Before Conn was able to pass on his instructions, however, the employees had started work. Nevertheless, as soon as they received the word they walked out. Then, according to plan, when the affected employers attempted to find out what was "behind the walkout" they were "uniformly referred to Bridge," who, presumably, as an ostensible employer representative not connected with Respondents could and would explain the reason for the walkout without fear of violating the Act or imputing a violation to Respondents. In taking this position, the General Counsel claims that the agency of Bridge, Kavner and Keul has been clearly established by the evidence and that the record shows that the three Respondents were working in concert.

Respondents' contention in substance is that the agency of Kavner, Bridge and Keul has not been established by the evidence and that consequently the complaint against the Teamsters and the Council must fall. With respect to the Local their position is that "there is not a scintilla of evidence" to show that the Local authorized the stoppages,

the reason for them or the basis for their settlement. Maintaining that the walkouts were unauthorized, Respondents point to the fact that they occurred in a pattern of such stoppages, all of which, including the ones in question, were terminated by the intercessions and orders of the Local.

The 8 (b) (4) (A) Allegation.

Although the case is not as clear as the General Counsel apparently believes, I am convinced and find that the substance of his 8 (b) (4) (A) contention, at least as to the Respondent Council and Local, is valid. In reaching the inference that these two Respondents are guilty of that unfair labor practice I find that Kavner at all times material was the agent of the Council. This fact first appears in the 1955 meeting with Clark[19] and nothing in subsequent events serves to change his status. His continued position of importance in the union hierarchy is shown by his authoritative handling of the discharges meted out by Osborn and by Conn's deference to him in the same matter. Indeed, Respondents tacitly admit Kavner's agency when they claim in their brief that "the only fair inference to be drawn from (Kavner's having stated that he was being forced to call the walkout at Bos 'authorized') is that Kavner was trying to prevent the discharge of employees **even though** they had engaged in an unauthorized work stoppage." (Emphasis in original.) As for Keul's purported agency I make no finding since his action adds nothing to the case and would not serve to bind the International.

[19] That this meeting took place outside the 6 months' limitation provided by Section 10 (b) of the Act does not prevent reliance on that evidence to help show Kavner's status. *Paramount Cap Mfg. Co.*, 119 N. L. R. B. No. 123; *N. L. R. B. v. Reed & Prince Mfg. Co.*, 205 F. 2d 131, 140 (C. A. 1); *N. L. R. B. v. General Shoe Corp.*, 192 F. 2d 504, 507 (C. A. 6). Furthermore, Kavner is identified as an organizer of the Council in the Board's Decision in *Clark Bros. Transfer Company*, supra.

Contrary to the Respondents, I am of the opinion that the record shows by substantial evidence the reason for the walkouts. Respondents' purpose to prevent interlining with Clark goes back to Kavner's threat in 1955, and is adequately demonstrated by the illegal efforts of Local 554 in that respect as found by the Board in 116 N. L. R. B.

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1891, supra.[20] While Bridge's warnings against interlining with Clark and other nonunion carriers cannot be attributed to the Respondents in and of themselves it seems to me that Kavner's referrals of all inquiry on the walkouts to Bridge point to a tie-in of those walkouts with the subject matter of Bridge's repeated warnings. In any event, Kavner's reply to Martin when the latter asked Kavner for an explanation of the walkout constitutes an admission that the walkouts were directed to interlining with Clark and other nonunion carriers.[20]

The motive thus established and considering Kavner's admission, the other circumstances of the case all fit as in a mosaic. That mosaic is the picture drawn by the General Counsel which I accept and find to be substantially what happened.[21] It seems to me a reasonable inference on these facts that the walkouts were instigated by Kavner and executed by the Local at Kavner's orders for the purpose of forcing Bos and Burlington to cease doing business with Clark and other nonunion carriers. I so find.

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[20] The statement, it will be recalled, was "Well, hasn't John Bridge warned your company of doing business with Romans and Clarks?" The mention of Bridge here does not affect this statement as an admission.

[21] In this connection I make no finding or reliance upon the calls made by Kavner to Hoffa or Bridge. Neither of the calls serves to implicate the International in the unfair labor practices found herein or to make Bridge the agent of Respondents.

Any spontaneity or unauthorized aspects of these walkouts are denied by the fact that the men had gone to work and so far as the record shows were called off the job with no reason being apparent to them since no grievances were pending.[22] Furthermore, the walkouts in other ways lack the flavor of unauthorized or wildcat strikes. Thus the striking employees informed Burlington's terminal manager, Vignaroli, that "they were told to clock off." In a wildcat or spontaneous walkout employees aren't "told" they do so on their own decision and volition particularly in small units. Moreover, when employees are told to strike and do so, it is by someone in authority, not a stranger. That authority here I find to have been the Local.

The 8 (b) (4) (B) Allegation.

Notwithstanding the Union's original attempt to illegally force Clark's recognition as shown by Kavner's 1955 request and the subsequent events which culminated in the Board's 8 (b) (4) (A) and (B) Decision and Order against Local 554, the evidence here falls short of the necessary preponderance to establish that the walkouts in question were for the additional purpose of forcing Clark's recognition of the Respondents.

Under **Paramount Cap Mfg. Co.**, supra, I am able to rely on evidence outside the 10 (b) period in making an unfair labor practice finding only where such evidence is not given "independent and controlling weight." This I understand to mean that where there is no evidence within the 10 (b) period whatsoever that can be augmented or explained by the extra 10 (b) evidence and the unfair labor

[22] The possibility of the existence of any latent dissatisfaction at Bos as might be implied from the testimony of Osborn about other walkouts there does not explain the complete absence of grievances at Burlington.

practice finding cannot be made but for the extra 10 (b) evidence no unfair labor practice can be found. See **News Publishing Company, Inc.**, 116 N. L. R. B. 210, Here Kavner's remark to Martin about his firm being warned against doing business with Clark supplies the evidentiary link to the extra 10 (b) evidence permitting its use in finding that

the purpose of the walkouts was to force the struck companies to cease doing business with Clark. There is no such link, however, permitting use of the extra 10 (b) evidence to find that there was the additional purpose to force Clark's recognition. In order to make that finding I would have to give "independent and controlling weight" to the extra 10 (b) evidence.

In any event, even considering the evidence of the original purpose to force Clark's recognition, the fact that the work stoppages were called by a local union in another State not having jurisdiction over Clark would seem to water down considerably any inference that those work stoppages were for the purpose of forcing recognition by Clark. If the purpose of the stoppages was not solely to punish Bos and Burlington for doing business with Clark or other nonunion carriers, it seems to me the inference that Respondents' purpose was to put Clark out of business is as permissible under these facts as the inference that they were to force Clark's recognition. In this light it is obvious that the 8 (b) (4) (B) allegation has not been established by a preponderance of the evidence. I so find.

The 8 (b) (1) (A) Allegation.

Relying on **Local 639, Teamsters, etc. (Curtis Bros., Inc.)**, 119 N. L. R. B. No. 33, 41 L. R. R. M. 1025; **IAM Lodge 942 (Alloy Mfg. Co.)**, 119 N. L. R. B. No. 38, 41 L. R. R. M.

1058; and Teamsters et al. **(Ruffalo's Trucking Service, Inc.)**, 119 N. L. R. B. No. 144, 41 L. R. R. M. 1270, the General Counsel further claims that the conduct in question also violates Section 8 (b) (1) (A) of the Act. The pertinent part of Section 8 (b) (1) (A) provides that it shall be an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of their right to self-organization and to bargain collectively through representatives of their own choosing as guaranteed in Section 7 of the Act.

In the above cases the Board held that minority picketing for exclusive representation violated Section 8 (b) (1) (A) on the grounds that when a union thus seeks to cause economic loss to an employer, the employees "cannot escape a share of the damage caused to the business on which their livelihood depends." In the absence of a finding that Respondents' purpose here was to force Clark's recognition, it is obvious that to find a violation of Section 8 (b) (1) (A) of the Act here would require a significant extension of the doctrine enunciated in the cited cases. This, I feel in the circumstances here and in consideration of the Board's statement in the **Curtis** case that it was "deciding only the legality of picketing with the unlawful purpose of foisting an unwanted union on the employees" is a matter for the Board to determine, not I. Accordingly on the grounds that the facts here do not come within the rule of the cases in question, I find no violation of Section 8 (b) (1) (A) here.

IV. The Effect of the Unfair Labor Practices Upon Commerce.

The activities of the Respondent Council and Local set forth in Section III above, occurring in connection with the operations of Clark, Bes and Burlington, described in Section I above, have a close, intimate and substantial re-

lation to trade, traffic and commerce among the several States and tend to lead to disputes burdening and obstructing commerce and the free flow thereof.

V. The Remedy.

Having found that Respondent Council and Respondent Local have engaged in conduct violative of Section 8 (b) (4) (A) of the Act, it will be recommended that said Respondents cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the

Act. Because of the prior Order of the Board against another Local of this union involving Clark Transfer and because the Respondent Council (while not named as a party therein) was involved in the unlawful conduct there, I feel that to effectuate the policies of the Act, it is necessary to recommend that Respondents cease and desist from their unlawful conduct as regards Bos and Burlington and any other employer as directed to Clark or any other common carrier by motor vehicle within their respective jurisdictions, and further in addition to a similar requirement as to Respondent Local that the Respondent Council cause appropriate notices to be posted in the offices and meeting places of each of its constituent Locals where such notices to the Locals' members are normally posted.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law.

1. By inducing and encouraging the employees of Bos Lines, Inc., and Burlington Truck Lines, Inc., to engage in a strike with an object of forcing or requiring said employers to cease doing business with Clark Bros. Trans-

fer Company, or other common carriers by motor vehicle, Respondent Council and Respondent Local have engaged in unfair labor practices within the meaning of Section 8 (b)(4) (A) of the Act.

2. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

3. None of the Respondents herein have violated Sections 8 (b) (1) (A) and 8 (b) (4) (B) of the Act as alleged herein, nor has the International violated Section 8 (b) (4) (A) as alleged herein.

Recommendations.

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, I recommend that Central States Drivers' Council and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147 shall

1. Cease and desist from:

(a) Engaging in, inducing or encouraging the employees of Bos Lines, Inc., Burlington Truck Lines, Inc., or any employer (other than Clark Bros. Transfer Company) to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, or commodities, or to perform any services for their respective employers, where an object thereof is to force Bos or Burlington or any employer (other than Clark) to cease doing business with Clark or any other common carrier by motor vehicle in the area over which Respondents have jurisdiction.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) (As to Local 147) Post at its business offices and meeting places and all other places where notices to its members are customarily posted copies of the notice attached hereto as "Appendix A." Copies of said notice to be furnished by the Regional Director for the Seventeenth Region, after being duly signed by official representatives of both Respondents shall be posted by the Respondent Local immediately upon receipt thereof and

maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places where notices to members of the Respondent Local are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced or covered by any other material. The Respondents' representatives shall also sign copies of said notice which the Regional Director shall submit for posting, the employers willing, at the premises of Bos Lines, Inc., and Burlington Truck Lines, Inc.;

(b) (As to the Council) Send to each of its constituent or member locals copies of the notice attached hereto as "Appendix B," duly signed by an official representative of the Council and furnished by said Regional Director with directions by the Council to post said notices in each of the Local's business offices and meeting places and all other places where notices to their members are customarily posted. The Respondent Council shall further instruct said Locals that said notices shall be posted by said Locals immediately upon receipt thereof and maintained for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall

be taken by said Respondents to insure that the notices are not altered, defaced, or covered by other material;

(c) Each Respondent shall notify the Regional Director for the Seventeenth Region, in writing, within twenty (20) days from the receipt of this Intermediate Report and Recommended Order as to what steps it has taken to comply herewith.

It is further recommended that unless each Respondent, within twenty (20) days from the receipt of this Intermediate Report and Recommended Order notifies the Regional Director, in writing, that it will comply with the foregoing recommendations, the Board issue an order requiring the Respondent to take the action aforesaid.

Dated at Washington, D. C., this . . . day of May, 1958.

Eugene E. Dixon,
Eugene E. Dixon,
Trial Examiner.

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Appendix A.

NOTICE.

To All Members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147

Pursuant to

the Recommendations of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

We Will Not engage in, or induce or encourage the employees of Bos Lines, Inc., Burlington Truck Lines, Inc., or any other employer to engage in a strike or a concerted refusal in the course of their employment to perform services for their respective employers where an object is to force or require Bos Lines, Inc., or Burlington Truck Lines, Inc., or any other employer to cease doing business with Clark Bros. Transfer Company or any other common carrier by motor vehicle.

Central States Drivers' Council,
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147.
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Appendix B.

NOTICE.

To All Officers and Members of All Local Unions Affiliated With the Central States Drivers' Council.

Pursuant to

the Recommendations of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

We Will Not engage in, or induce or encourage the employees of Bos Lines, Inc., Burlington Truck Lines, Inc., or any other employer to engage in a strike or a concerted refusal in the course of their employment to perform services for their respective employers where an object thereof is to force or require Bos Lines, Inc., Burlington Truck Lines, Inc., or any other employer to cease doing business with Clark Bros. Transfer Company or any other common carrier by motor vehicle.

Central States Drivers' Council.
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced or covered by any other material.

APPENDIX "C".

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit.

Central States Drivers Council, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147, Petitioners, v. National Labor Relations Board, Respondent.	No. 14,726.

Decree.

Before: Mr. Justice Burton, retired,[1] and Wilbur K. Miller and Fahy, Circuit Judges.

This Cause came on to be heard upon the petition of Central States Drivers Council, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147, to review and set aside a certain order issued against it by the National Labor Relations Board on August 29, 1958, and upon the Board's answer and cross-petition to enforce said order. The Court heard argument of respective counsel on April 10, 1959, and has considered the briefs and transcript of record filed in this cause. On May 7,

[1] Setting by designation pursuant to Sec. 294 (a), Title 28, U. S. Code.

1959, the Court, being fully advised in the premises, handed down its decision affirming the Board's Order.

On Consideration Whereof, it is ordered, adjudged and decreed by the United States Court of Appeals for the District of Columbia Circuit that the said order of the National Labor Relations Board in said proceeding be, and the same hereby is, affirmed, and that Central States Drivers Council, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147, their officers, representatives, agents, successors and assigns abide by and perform the directions of the Board in said order contained.

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Judge, United States Court of Appeals
for the District of Columbia Circuit.

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Judge, United States Court of Appeals
for the District of Columbia Circuit.

.....
Judge, United States Court of Appeals
for the District of Columbia Circuit.

Appendix A.

NOTICE.

To All Members of Central States Drivers' Council; To All Members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147; To All Members of All Other Local Unions Affiliated With Central States Drivers' Council; and to All Employees of Bos Lines, Inc., Burlington Truck Lines, Inc., and Clark Bros. Transfer Company

Pursuant to

A Decree of the United States Court of Appeals Enforcing an Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not engage in, or induce or encourage the employees of Bos Lines, Inc., Burlington Truck Lines, Inc., or any employer other than Clark Bros. Transfer Company, to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle, or work on goods, articles, materials or commodities, or to perform any services for their respective employers, where an object thereof is to force or require said employers or any other employer or person to cease doing busi-

ness with Clark Bros. Transfer Company or any other similar common carrier.

Central States Drivers' Council
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147.
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX "D".

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit.

(Filed June 25, 1959, Joseph W. Stewart, Clerk)

No. 14,726.

September Term, 1958.

Central States Drivers Council, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local No. 147, Petitioners,

v.

National Labor Relations Board, Respondent.

Before: Burton, Associate Justice of the Supreme Court, Retired, Sitting by Designation, Wilbur K. Miller, and Fahy, Circuit Judges, in Chambers.

ORDER.

It is Ordered by the court that the opinion of this court entered May 7, 1959, is amended by striking on lines 3 and 4 of page 3 the words "within the jurisdiction of petitioner" and inserting in lieu the words "in Nebraska."

Per Curiam.

Dated: June 25, 1959.

APPENDIX "E."

Excerpt from Labor Management Relations Act of 1947, 29 U. S. C., Section 151:

Section 8 (b) (4):

"(b) It shall be an unfair labor practice for a labor organization or its agents— * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;"